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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-20
Regulation title	Advertising
Action title	Revisions as a Result of Periodic Review
Document preparation date	August 20, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This action is intended to revise the Alcoholic Beverage Control Board's regulations governing the advertising of alcoholic beverages, to loosen the current restrictions on the types of advertising materials which may be used by sellers of alcoholic beverages. The action is the result of a recent periodic review of this regulation.

The goals of this regulation are:

To promote the public health, safety, and welfare by promoting moderation in alcoholic beverage advertising, while allowing manufacturers, distributors, and retailers a reasonable opportunity to promote their products in the marketplace.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. Section 4.1-320 generally prohibits alcoholic beverage advertising in Virginia, except in accordance with Board regulations. The Code mandates that the Board promulgate regulations, but details are left to the Board's discretion.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In 3 VAC 5-20-10, subsection B, prohibiting cooperative advertising, will be moved to 3 VAC 5-30, Tied-House. In the same section, subsection E. 4. would be amended to eliminate references to curative or therapeutic claims, or claims disparaging to a competitor's product.

In 3 VAC 5-20-20, the section will be rewritten to eliminate the distinction between permanent and non-permanent point-of-sale materials, and to allow retail establishments to use all but illuminated point-of-sale materials inside their establishments. Current restrictions on the provision of such materials by industry members will be moved to 3 VAC 5-30, Tied-House.

In 3 VAC 5-20-30, the section will be rewritten to eliminate specific language restrictions on exterior advertising signs at licensed establishments. Retailers will be allowed non-brand-identified exterior alcoholic beverage advertising at the licensed premises.

In 3 VAC 5-20-40, restrictions on specific language in alcoholic beverage advertising contained in subsections A.1., A. 2., A. 3., and B.3., shall be eliminated, and the limit on the percentage of advertising space which may be occupied by the identification of the sponsor in moderation messages in college student publications currently in subsection B.5., will be eliminated.

3 VAC 5-20-50 would be repealed.

In 3 VAC 5-20-60, the value of novelty and specialty items which may be given away would be raised to \$20 in subsections 1, 2, and 3. Subsection 2 would be amended to allow the display of novelty and specialty items on retail premises, and to allow retail licensees to give such items to patrons. Subsection 6 would be amended to allow wholesalers to put order blanks for novelty and specialty items on packages. A new subsection would be added to this section, allowing manufacturers and wholesalers to provide retailers promotional items valued up to \$100 in connection with a particular advertising campaign, which items must be reclaimed at the conclusion of the campaign.

Sections 3 VAC 5-20-70 and 3 VAC 5-20-80 would be repealed.

3 VAC 5-20-90 would be amended to allow coupons to be distributed on the internet, and to allow beer wholesalers to affix manufacturers' coupons to the package.

In 3 VAC 5-20-100, the section would be amended to allow sponsorship of public events by wholesalers and to expand the definition of charitable event to include events held for the purpose of raising the public awareness of a charitable organization.

These amendments will protect the health, safety, or welfare of citizens by maintaining reasonable restrictions on alcoholic beverage promotion to help ensure temperance, while allowing industry members additional ability to market their products.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Alcoholic Beverage Control Board has considered making no changes to the regulation, but believes the changes being considered can be made without endangering the public. It will consider any additional alternatives which may arise during the public comment period following the publication of the Notice of Intended Regulatory Action.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

It is not expected that this regulatory action will have any impact on the institution of the family.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
Adams Outdoor Advertising	Allowing advertising of distilled spirits, wine and beer on outdoor advertising signs.	Suggested amendment to 3 VAC 5-2-30 will expand allowed exterior advertising to some extent, but will not allow for highway billboard advertising.
Diageo North America	Allow all forms of interior and exterior premises advertising materials, including neon signs, mirrors, etc. Such advertising should be available from any source, including manufacturers and wholesalers. Manufacturers and wholesalers should be allowed to sell brand-identified service items to retailers at cost, and requirement that such items contain a responsible drinking message to be given to retailers should be repealed. Manufacturers should be allowed to provide point-of-sale	Suggested amendments to 3 VAC 5-20-20 would allow all but illuminated point of sale materials. Suggested amendments to 3 VAC 5-20-30 will expand non-brand identified exterior advertising at retail premises. Current limitations on the types of point-of-sale which may be provided by industry members to retailers will be retained, however the current provision with respect to service items will be amended to eliminate the percentage of the space which may be dedicated to the logo of the sponsoring manufacturer or wholesaler and to allow brand identification. These provisions will be moved to 3 VAC 5-30. Suggested

<p>Miller Brewing Company</p>	<p>materials, including service items and prefabricated bins or racks, up to the federal limit of \$300 per brand per year. Spirits brokers and solicitors should be allowed to furnish sweepstakes entry blanks to on-premises licensees.</p> <p>Allow manufacturers, importers, bottlers, brokers, wholesalers, or their representatives to conduct or participate in up to four promotional events at a retailer’s premises per calendar year, allowing the giving away of promotional items to patrons, purchase of drinks for selected patrons at such events, and bringing in of promotional items for display purposes. Increase allowed value of inflatable point-of-sale advertising items to \$25. Allow wholesalers to sponsor public events. Allow distribution of novelty and specialty items to be given to patrons on the premises of retail licensees. Allow manufacturers and wholesalers to provide promotional items for display in connection with an advertising campaign, to be reclaimed upon completion of the campaign. Allow distribution of coupons over the internet. Allow beer and wine licensees to attach refund coupons to product packages. Allow cooperative advertising and awards of alcoholic beverages in connection with sponsorship of public events. Expand definition of charitable event to include events for the purpose of raising public awareness of charitable organization.</p>	<p>amendments to 3 VAC 5-20-20B4g will allow spirits manufacturers and their representatives to provide sweepstakes entry blanks to on-premises licensees.</p> <p>Suggested amendment to 3 VAC 5-20-10 will allow manufacturers, importers, bottlers, brokers, wholesalers, or their representatives to conduct up to two promotional events per year at a retail establishment, however no purchase of alcoholic beverages for patrons will be allowed. Suggested amendment to 3 VAC 5-20-20 will remove limits on value of inflatable items which retailers may display. Restrictions on providing these items will be moved to 3 VAC 5-30, and the Board will consider changing the value limit as requested. Suggested amendments to 3 VAC 5-20-60 will allow display of novelty and specialty items on retail premises, and will allow retailer to give them to patrons. Another suggested amendment to this section would allow the temporary provision of display items by a manufacturer or wholesaler to a retailer. Suggested amendments to 3 VAC 5-20-90 will allow distribution of coupons by the internet and allow all wholesale licensees to attach refund coupons to packages. Current prohibitions against cooperative advertising and awards of alcoholic beverages in connection with sponsorship of public events will remain, but suggested amendments to 3 VAC 5-20-100 will allow sponsorship of public events by wholesalers, and will expand the definition of charitable event to include events for the purpose of raising public awareness of a charitable organization.</p>
<p>Richmond Pub Alliance</p>	<p>Repeal interior advertising regulation entirely, or remove prohibitions against permanent point-of-sale advertising and the provision of brand-identified service items by manufacturers and wholesalers. Repeal current prohibitions against exterior advertising and advertising happy hour. Allow display of brand-identified novelty and specialty items on retail premises.</p>	<p>Suggested amendments to 3 VAC 5-20-20 will remove prohibitions against all but illuminated permanent point-of-sale advertising. Current limitations on the types of point-of-sale which may be provided by industry members to retailers will be retained, however the current provision with respect to service items will be amended to eliminate the percentage of the space which may be dedicated to the logo of the sponsoring manufacturer or wholesaler and to allow brand identification. These provisions will be moved to 3 VAC 5-30. Suggested amendment to 3 VAC 5-2-30 will expand</p>

<p>Virginia Beer Wholesalers Association</p>	<p>Transfer ban on cooperative advertising to Tied House chapter. Repeal ban on advertising claims of therapeutic effect. Allow any type of point-of-sale advertising, as long as it is not illuminated, electrical, machines, metal, wood, glass or hard plastic. Transfer provision prohibiting manufacturers and wholesalers from providing retailers with service items to Tied House chapter. Allow wholesalers to put entry blanks for sweepstakes on packages. Repeal requirement for retail licensees to maintain records of point-of-sale advertising materials obtained. Simplify signage regulations. Allow retailers to use exterior premises signs as long as not advertising brands. Eliminate restrictions on language which may be used in print or electronic media. Remove percentage limitation on advertising in connection with moderation messages in college publications. Remove quantity limits on novelty and specialty items which may be given to retailers. Allow retailers to give novelty and specialty items to patrons. Allow display of novelty and specialty items on retail premises. Allow wholesalers to put order blanks for novelty and specialty items on packages. Repeal fair and trade show and film presentation advertising sections. Remove limit on value of refund coupons. Allow beer wholesalers to affix coupons to package.</p>	<p>allowed non-brand identified exterior advertising at retail premises. Suggested amendment to 3 VAC 5-20-30 and 3 VAC 5-20-40 will remove prohibition against advertising happy hour. Suggested amendments to 3 VAC 5-20-60 will allow the display of novelty and specialty items on retail premises.</p> <p>Therapeutic claims ban would be repealed. Suggested amendments to 3 VAC 5-20-20 will remove prohibitions against all but illuminated permanent point-of-sale advertising. Current limitations on the types of point-of-sale which may be provided by industry members to retailers will be retained, however the current provision with respect to service items will be amended to eliminate the percentage of the space which may be dedicated to the logo of the sponsoring manufacturer or wholesaler and to allow brand identification. These provisions will be moved to 3 VAC 5-30. Suggested amendment to 3 VAC 5-2-30 will expand allowed non-brand identified exterior advertising at retail premises. Suggested amendments to 3 VAC 5-20-60 will allow display of novelty and specialty items on retail premises, will allow retailer to give them to patrons, and will allow wholesalers to affix order blanks to package. Suggested amendments to 3 VAC 5-20-90 will allow distribution of coupons by the internet and allow all wholesale licensees to attach refund coupons to packages, but current value limitations would be retained. Fair and trade show and film presentation sections would be repealed.</p>
<p>Virginia Hospitality & Travel Association</p>	<p>Repeal 3 VAC 5-20-20 in its entirety and allow retail licensees to do whatever interior advertising they desire and obtain materials from any source. In the alternative, remove restriction on permanent point-of-sale materials. Allow</p>	<p>Suggested amendments to 3 VAC 5-20-20 will remove prohibitions against all but illuminated permanent point-of-sale advertising. Current limitations on the types of point-of-sale which may be provided by industry members to retailers will be retained, however the current provision with respect to service items will be</p>

	<p>manufacturers and wholesalers to provide service items to retailers. Remove current restrictions on advertising happy hours, as well as language restrictions on mixed beverage advertising. Remove restrictions on exterior advertising. Allow display of brand-identified novelty and specialty items on retail premises.</p>	<p>amended to eliminate the percentage of the space which may be dedicated to the logo of the sponsoring manufacturer or wholesaler and to allow brand identification. These provisions will be moved to 3 VAC 5-30. Suggested amendment to 3 VAC 5-20-30 and 3 VAC 5-20-40 will remove prohibition against advertising happy hour. Suggested amendment to 3 VAC 5-2-30 will expand allowed non-brand identified exterior advertising at retail premises. Suggested amendments to 3 VAC 5-20-60 will allow display of novelty and specialty items on retail premises, will allow retailer to give them to patrons.</p>
<p>Virginia Retail Merchants Association</p>	<p>Allow interior and exterior advertising using banners/signs as long as advertising is located on retailers' property. Allow all forms of advertising materials.</p>	<p>Suggested amendments to 3 VAC 5-20-20 will remove prohibitions against all but illuminated permanent point-of-sale advertising. Suggested amendment to 3 VAC 5-2-30 will expand allowed non-brand identified exterior advertising at retail premises.</p>
<p>Virginia Wineries Association</p>	<p>Request clarification of whether farm wineries may advertise restaurants, not wine, in local high school yearbooks or athletic programs. Allow therapeutic effect claims. Request clarification as to whether wineries may fly flags outside facilities. Allow provision of wine racks with advertising material to retailers by wineries. Allow wineries to provide brand-identified service items to retailers. Retain ability to provide "neckers". Eliminate record-keeping requirements regarding point-of-sale materials. Clarify that Virginia Department of Transportation "grape cluster" and other highway signs are excluded from the exterior advertising limitations. Allow exterior advertising of wine events and festivals, as well as the availability of Virginia wine. Should not limit electronic advertising more than print advertising. Raise value limit on novelty and specialty items. Allow wineries to supply novelty and specialty items to patrons at retail establishments. Allow wineries to show video presentations of their production processes. Permit electronic discount coupons for on-site winery visitors. Retain current sponsorship limitations, but</p>	<p>Current regulations allow the advertisement of restaurants located on the premises of a farm winery in local high school yearbooks or athletic programs, as long as there is no reference to beer, wine, or mixed beverages. Wineries may fly flags outside facilities. Current ban on false or misleading advertising will remain, but suggested amendments to 3 VAC 5-20-10 will remove prohibition against therapeutic claims. Suggested amendments to 3 VAC 5-20-20 will remove prohibitions against all but illuminated permanent point-of-sale advertising. Current limitations on the types of point-of-sale which may be provided by industry members to retailers will be retained, however the current provision with respect to service items will be amended to eliminate the percentage of the space which may be dedicated to the logo of the sponsoring manufacturer or wholesaler and to allow brand identification. These provisions will be moved to 3 VAC 5-30. Since Tied-House provision will remain, record-keeping on point-of-sale items received will be retained. Suggested amendment to 3 VAC 5-2-30 will expand allowed non-brand identified exterior advertising at retail premises. Electronic and print advertising will be treated the same for all beverages. Suggested amendments to 3 VAC 5-20-60 will allow display of novelty and specialty items on retail premises, will allow retailer to give them to patrons, and will raise value allowed. Current restriction on film presentations would be repealed. Suggested</p>

	eliminate prior notice requirement.	amendments to 3 VAC 5-20-90 will allow distribution of coupons by the internet, but current restriction to refund coupons will remain. Current prohibitions against cooperative advertising and awards of alcoholic beverages in connection with sponsorship of public events will remain, but suggested amendments to 3 VAC 5-20-100 will allow sponsorship of public events by wholesalers, and will expand the definition of charitable event to include events for the purpose of raising public awareness of a charitable organization. Prior notice requirement will be retained. Current regulation requires notice, not permission, for event sponsorship. Enforcement agents need to know where promotion will be held to ensure compliance.
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This regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. Without this regulation, most alcoholic beverage advertising would be illegal under the provisions of § 4.1-320.